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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 537 of 2015

and

MP (MD) No. 1 of 2015

Kumaravel ... Appellant/Petitioner

Vs.

1.P.Natarajan ... 1st Respondent/1st Respondent

2.The New India Assurance Company
Limited,
Rep. through its Branch Manager,
Branch Office, Door No.147,
Salai Road, Ramanathapuram. ... 2nd Respondent/ 2nd Respondent

Prayer: This Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order dated 23.08.2012 passed in WC.No.269 of 2009 by the Commissioner of Workmen Compensation, Madurai.

For Appellant : Mr.J.Barathan for
Mr.T.R.Jeyapalam

For Respondents : Mr.B.Vijay Karthikeyan for R2

No appearance for R1

JUDGMENT

The appellant herein was employed as a driver under the first respondent herein. He met with an accident during the course of employment. He suffered multiple fractures. The Mini Van was insured with the second respondent. The appellant filed WC.No.269 of 2009 before the Commissioner of Workmen Compensation, Madurai.

2.The claimant examined himself as PW.1 and the doctor as PW.2. The claimant marked Ex.C3. Unfortunately, the policy what was marked was a policy for the year 24.07.2007 to 23.07.2008. The accident in question occurred on 12.04.2007. Holding that Ex.C3 policy would not cover the accident in question, the authority fastened the liability only on the owner and exonerated the insurance company by his award dated 23.08.2012. This is challenged in this appeal on the ground that the liability must be fastened on the insurance company. More so, when there is no denial that there was policy coverage on the date of accident, the



inadvertent marking of the subsequent policy appears to have swayed the authority.

3. This Civil Miscellaneous Appeal is admitted on the following substantial questions of law :

a. Whether the first respondent is liable to pay the compensation when the second respondent did not deny the factum of insurance on the date of accident ?

b. Whether the liability can be fixed on the first respondent when the vehicle had been insured with the second respondent with Policy No. 728304/31/06/01/00001273?

4. The learned counsel appearing for the appellant produced before me policy for the period 24.07.2006 to 23.07.2007. The learned counsel appearing for the second respondent cannot dispute and rightly did not dispute that the policy was very much in force during the relevant time. Therefore, even in the statement of objections filed before the Deputy Commissioner for Workmen Compensation, Madurai, the second respondent denied the liability by raising other contentions. In other words, the second respondent themselves admitted that policy was in force during the relevant time. Therefore, the authority erred in exonerating the insurance company.

6. I therefore answer the substantial question in favour of the appellant and modify the award dated 23.08.2012 made in WC.No.269 of 2009 passed by the Commissioner of Workmen Compensation, Madurai. The second respondent is directed to satisfy the award by paying the appellant a sum of Rs.1,89,409/- with interest at the rate of 12% per annum to be computing after 30 days from the date accident, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the said amount, less the amount already withdrawn by him, if any, by filing proper application before the Commissioner for Workmen Compensation, Madurai.

7. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To



2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.B.VIJAYKARTHIKEYAN, Advocate, SR. 84043

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